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## FACSIMILE

Date: December 13, 2002

To: Assistant Commissioner for Patents  
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Re: U.S. Patent Application No.: 09/853,042

Title: BIOCEMENTS HAVING IMPROVED COMPRESSIVE STRENGTH

Attorney Docket No.: MERCK-2238

Total No. of Pages: 9; if you do not receive all pages, please call (703) 243-6333

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of :

Robert WENZ et al.

**Att: PATENT PUBLICATIONS**

Serial No.: 09/853,042

Group Art Unit: 1615

Filed: May 11, 2001

Examiner: C. Azpiru

Allowed: July 2, 2002

For: BIOCEMENTS HAVING IMPROVED COMPRESSIVE STRENGTH

**LETTER REGARDING SUBMISSION OF PRIORITY DOCUMENTS**Assistant Commissioner for Patents  
Washington, D. C. 20231

Sir:

On October 22, 2002, Applicants received a communication from the Office which stated that the Certified Copies of the Priority Document had not yet been received. Applicants respectfully submit that the certified copy of the Priority Document has been filed in this application.

Enclosed is a copy of the application transmittal paper which was filed with the application on May 11, 2001. As can be seen from box 15 on this transmittal, the certified copy of the Priority Document accompanied the application papers.

Also enclosed is a copy of the front page of the certified Priority Document (Applicants' counsel keeps a copy of this page in their files). Also enclosed is an excerpt from the Patent Office filing book of Applicants' counsel for the date May 11, 2001. The fourth entry on this document refers to Merck 2238 (Attorney docket number for the above-identified application). Under Papers Filed for this entry is the term "P D," which refers to priority document. Also enclosed is a copy of the receipt postcard stamped by the Patent and Trademark Office on May 11, 2002, with respect to the filing of the application papers for the above-identified application. As can be seen, the box for priority documents is checked on this postcard indicating that the priority document was filed with the application. In light of the above, Applicants filed a "Request for Complete Notice of Allowance" (copy enclosed) on August 22, 2002, requesting

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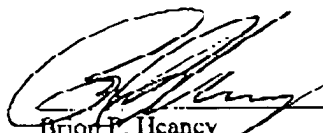
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SIGNATURE: MICHELLE - BRANIGAN  
M. Branigan 12/19/02

acknowledgement of receipt of the certified copy of the priority document.

For the reasons discussed above, it is respectfully submitted that the communication from the Patent Office issued October 22, 2002, was issued in error. The above evidence demonstrates that Applicants did file a certified copy of the priority document. Thus, it is respectfully submitted that the face of the patent which is to issue on the above identified application should indicate the claim to priority under 35 U.S.C. 119, based on European patent application EP 00110045.2.

Respectfully submitted,




Brian P. Hancay  
Registration No. 32,542  
Attorney/Agent for Applicants

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Attorney Docket No.: MERCK-2238

Date: December 13, 2002

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PTO/SB/05 (11-00)

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**UTILITY  
PATENT APPLICATION  
TRANSMITTAL**

(Only for new nonprovisional applications under 37 C.F.R. 1.53(b))

Attorney Docket No.	MERCK 2238
First Inventor	Robert WENZ et al.
Title	BIOCEMENTS HAVING IMPROVED COMPRESSIVE STRENGTH
Express Mail Label No.	

**APPLICATION ELEMENTS**

See MPEP chapter 600 concerning utility patent application contents.

1. ☐ Fee Transmittal Form (e.g., PTO/SB/17)  
(Submit an original and a duplicate for fee processing)
2. ☐ Applicant claims small entity status  
See 37 CFR 1.27
3. ☒ Specification (Total Pages 11)  
(preferred arrangement set forth below)  
- Descriptive title of the invention  
- Cross References to Related Applications  
- Statement Regarding Rod sponsored R & D  
- Reference to sequence listing, a table,  
or a computer program listing appendix  
- Background of the invention  
- Brief Summary of the invention  
- Brief Description of the Drawings (if filed)  
- Detailed Description  
- Claim(s)  
- Abstract of the Disclosure
4. ☒ Drawing(s) (35 U.S.C. 113) (Total Sheets 1)
5. Oath or Declaration (Total Pages 1)  
a. ☐ Newly executed (original or copy)  
b. ☐ Copy from a prior application (37 CFR 1.63 (d))  
(for a continuation/divisional with Box 18 completed)  
c. ☐ DELETION OF INVENTOR(S)  
Signed statement attached deleting inventor(s)  
named in the prior application, see 37 CFR  
1.63(a)(2) and 1.33(b)
6. ☐ Application Data Sheet. See 37 CFR 1.76

**ADDRESS TO:**Assistant Commissioner for Patents  
Box Patent Application  
Washington, DC 20231

7. ☐ CD-ROM or CD-R in duplicate, large table or  
Computer Program (Appendix)
8. Nucleotide and/or Amino Acid Sequence Submission  
(if applicable, all necessary)  
a. ☐ Computer Readable Form (CRF)  
b. Specification Sequence Listing on:  
i. ☐ CD-ROM or CD-R (2 copies); or  
ii. ☐ paper  
c. ☐ Statements verifying identity of above copies

**ACCOMPANYING APPLICATIONS PARTS**

9. ☐ Assignment Papers (cover sheet & document(s))
10. ☐ 37 C.F.R. §3.73(p) Statement of Power of Attorney  
(when there is an assignee)
11. ☐ English Translation Document (if applicable)
12. ☐ Information Disclosure Statement (IDS)/PTO-1449 ☐ Copies of IDS  
Creations
13. ☐ Preliminary Amendment
14. ☐ Return Receipt Postcard (MPEP 503)  
(Should be specifically itemized)
15. ☒ Certified Copy of Priority Document(s)  
(if foreign priority is claimed)
16. ☐ Request and Certification under 35 U.S.C. 122  
(b)(2)(B)(i). Applicant must attach form PTO/SB/35  
or its equivalent.
17. ☐ Other.

18. If a CONTINUING APPLICATION, check appropriate box, and supply the requisite information below and in a preliminary amendment,  
or in an Application Data Sheet under 37 CFR 1.76:

☐ Continuation ☐ Divisional ☐ Continuation-in part (CIP)  
Prior application information: Examiner \_\_\_\_\_

of prior application No. \_\_\_\_\_ /  
Group / Art Unit

For CONTINUATION or DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied  
under Box 5b, is considered a part of the disclosure of the accompanying or divisional application and is hereby incorporated by reference.  
The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

**17. CORRESPONDENCE ADDRESS**☒ Customer Number or Bar Code Labelor ☐ Correspondence address below

Name				
Address				
City	State	Zip Code		
Country	Telephone	Fax		

Name (Print/Type)

Brian P. Heaney

Registration No. (Attorney/Agent)

32,542

Signature

Date

May 11, 2001

Before Your Signature: This Patent Application is due to the Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant  
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